

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

March 13, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 09HD-005

**HAWAII**

Grant of Perpetual, Non-Exclusive Easement to the Carol A. Christianson Trust,  
for Access and Utility Purposes, Hienaloli, North Kona, Hawaii, Tax Map Key:  
3<sup>rd</sup>/ 7-5-11: portion of 6.

**APPLICANT:**

Carol A. Christianson, Trustee of the Carol A. Christianson Trust dated February 3, 2005,  
whose mailing address is: 75-5454 Mamalahoa Highway, Holualoa, Hawaii 96725.

**LEGAL REFERENCE:**

Section 7-1, Hawaii Revised Statutes, as amended, Miscellaneous Rights of the People.  
Section 171-13, Hawaii Revised Statutes, as amended.

**LOCATION:**

Portion of Government lands of Keopu Cemetery situated at Hienaloli 1<sup>st</sup>, North Kona,  
Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/ 7-5-11: portion of 6, as shown on the attached  
map labeled Exhibit A.

**AREA:**

.1547 acres or 6,740 square feet, more or less.

**ZONING:**

State Land Use District:     Agriculture  
County of Hawaii CZO:     Agriculture

**TRUST LAND STATUS:**

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered under Governor's Executive Order No. 199 to the County of Hawaii, for public cemetery purposes.

CHARACTER OF USE:

For access and utility:  
Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis

ANNUAL RENT:

Not applicable.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 2, 3(D), and 6, that states, respectively;

"Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height and dimensions as the structure replaced."

"Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including, but not limited to water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements."

“Construction or placement of minor structures accessory to existing facilities.”

DCCA VERIFICATION:

Not applicable.

The Applicant as a landowner/Trustee is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 2) Contact the State Historic Preservation Division for final inspection of the easement route after it has been granted and staked, to verify its location prior to actual construction.

REMARKS:

By letter dated January 16, 2006, Wallace H. Gallup Jr., attorney representing the Carol Christianson Trust, requested an easement over State-owned lands situate at Hienaloli, North Kona, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 7-5-11: portion of 6. Mr. Gallup explained that the Carol Christianson Trust property, identified as Tax Map Key: 3<sup>rd</sup>/ 7-5-11: 7, is a landlocked kuleana with no legal accesses to the adjacent Mamalahoa Highway. Purpose of this request is to establish legal accesses for the private property so Mrs. Christianson can commence construction of her residence.

The State Abstractor was consulted and was able to confirm that the subject private property, being cultivated fields situated in the Ili of Papaawela at Hienaloli, North Kona, Hawaii, adjudicated as Apana 2 of Land Commission Award 7630 to Kawaha, dated November 12, 1951, is a kuleana.

Pursuant to Chapter 7-1, Hawaii Revised Statutes, as amended, Miscellaneous Rights of the People, states, “...the people shall have the right to drinking water, and running water and the right of way. The springs of water, running water, and roads shall be free to all, on the lands granted in fee simple...”. As a result, the easement will be issued at gratis.

Research of the State-owned property indicates that the parcel is currently under Governor's Executive Order (GEO) No. 199, to the County of Hawaii for public cemetery purposes. Applicant has been in communication with the County of Hawaii, Department of Parks & Recreation, to request an easement. Although the county has no objections to the request, it has been determined that it does not have the authority to issue a perpetual easement over the subject State property. Reasons the county cannot

issue a perpetual easement are: 1) The State is the landowner on record; 2) the GEO is for public cemetery or related purposes only; and 3) if the cemetery is abandoned and/or GEO 199 is cancelled, the easement would in turn be extinguished.

On October 2008, the State Historic Preservation Division (SHPD) conducted an inventory survey and found that the proposed easement alignment follows a former driveway/ access road to Parcel 7, and that remnants of an earlier horse trail also partially overlap the corridor. These prior routes have further been impacted by the widening of Mamalahoa Highway and by erosion along the steep slope. Sufficient information was collected during the survey to mitigate any impacts that a new driveway might have on the historic trail remnant. The SHPD has no objections to the issuance of an easement, with the understanding that it will follow the corridor as surveyed and depicted in the inventory survey report. Mrs. Christianson is to contact SHPD to conduct the final inspection of the easement route after it has been granted and staked, to verify its location and condition prior to commencement of construction.

Carol A. Christianson has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Various governmental agencies were solicited for comments. To date, all respondents indicated that they had no objections to the request.

AGENCIES	COMMENTS
<b>County of Hawaii:</b>	
Parks & Recreation	No objections
Planning Department	** See comments, "Exhibit B"
Public Works	** See comments, "Exhibit C"
Water Supply	No objections
<b>State of Hawaii:</b>	
DLNR-CWRM	No objections
DLNR-Historic Preservation	** See comments, "Exhibit D"
DLNR-Na Ala Hele Trails	No response
Office of Environmental and Quality Control	** See comments, "Exhibit E"
<b>Other Agencies/ Interest Groups:</b>	
Office of Hawaiian Affairs	No response


**RECOMMENDATION:** That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is

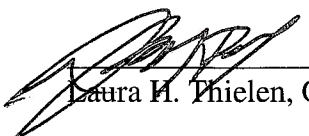
therefore exempt from the preparation of an environmental assessment.

2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (3) 7-5-011: 007, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to the Carol A. Christianson Trust, covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current perpetual, non-exclusive, access and utility easement document form, as may be amended from time to time;
  - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (3) 7-5-11: 007, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
\_\_\_\_\_  
Wesley T. Matsunaga  
Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Laura H. Thielen, Chairperson

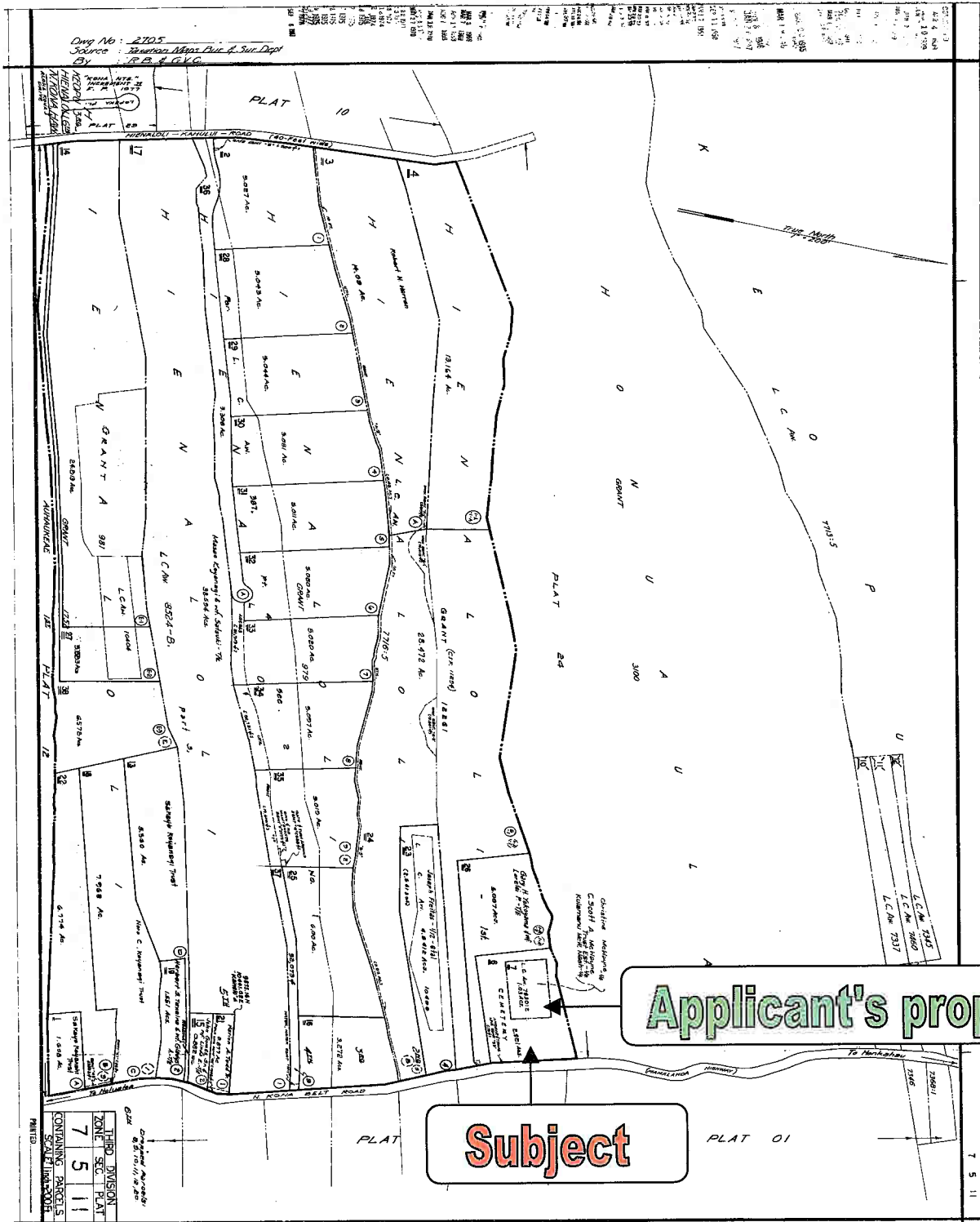
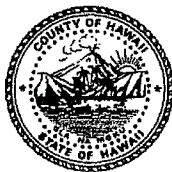


EXHIBIT A



March 13, 2009

Harry Kim  
Mayor



## County of Hawaii

### PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

Christopher J. Yuen  
Director

Brad Kurokawa, ASLA, LEED™ AP  
Deputy Director

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PLANNING DEPARTMENT  
HILLO, HAWAII

March 17, 2008

Mr. Wes Matsunaga  
Land Agent  
State Department of Land and Natural Resources  
P.O. Box 936  
Hilo, HI 96721

Dear Mr. Matsunaga:

Request for Comments regarding Proposed Easement over State Land  
TMK: 7-5-011: 006 & 007; Hienaloli 1<sup>st</sup>, North Kona, Hawaii

At the request of Carol Christianson, owner of Parcel 7 described above, we are providing you with our comments regarding a proposed access easement over Parcel 6, owned by the State of Hawaii, in favor of Parcel 7. While we have no specific objection to the establishment of the proposed easement, we do have the following comments to offer for your consideration:


1. The proposed easement will traverse through the Keopu Cemetery. We assume that the State will ensure that the alignment of the proposed access easement will not adversely affect any existing gravesites located on the property.
2. The enclosed plan shows the alignment of an old donkey trail. We recommend that the Na Ala Hele and the Historic Preservation Division be consulted to ensure that historical sites or public access trails will not being compromised by the proposed easement.
3. We are not sure if this particular section of the Mamalahoa Highway is owned and maintained by the County of Hawaii. We recommend that you make contact with the County of Hawaii Department of Public Works to confirm, if applicable, their particular requirements for the installation of a new driveway access point at this particular location. By a copy of this letter, we will provide them with a copy of your submittal.



Mr. Wes Matsunaga  
Land Agent  
State Department of Land and Natural Resources  
Page 2  
March 17, 2008

Thank you for giving us the opportunity to comment. Please contact Daryn Arai of this office should you have any questions regarding this matter.

Sincerely,



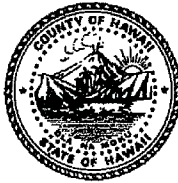
CHRISTOPHER J. YUEN  
Planning Director

DSA:cs  
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xc w/Ms. Christianson ltr: West Hawaii Office  
DPW-Engineering (Hilo)

**EXHIBIT B**

Harry Kim  
Mayor



**County of Hawai'i**  
**DEPARTMENT OF PUBLIC WORKS**

Aupuni Center  
101 Pauahi Street, Suite 7 · Hilo, Hawai'i 96720-4224  
(808) 961-8321 · Fax (808) 961-8630  
www.co.hawaii.hi.us

Bruce C. McClure  
Director

2008 Jiro A. Sumada  
Deputy Director 17

March 20, 2008

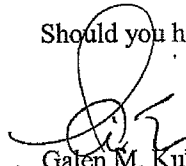
Mr. Wes Matsunaga, Land Agent  
State Department of Land and Natural Resources  
P.O. Box 936  
Hilo, HI 96721

Subject: Request for Comments  
Proposed Driveway over State land to Mamalahoa Highway  
TMK: (3)7-5-011:006 & 007

At the request of Carol Christianson, owner of subject parcel 7, the following are our comments on construction of a proposed driveway to Mamalahoa Highway through parcel 6 to serve parcel 7.

1. Mamalahoa Highway, the County road serving the subject property, is a secondary arterial road. It has an 18-20-ft. wide pavement within a variable right-of-way width. It is substandard based on width, alignment and roadside hazard clearances.
2. All driveway connections to a County road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code. Driveway approaches shall conform to County standards details R-37 and R-38. A permit is required for work in the County right-of-way. Carol will need to show proof of legal access over parcel 6 to obtain the permit.
3. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code. A grading plan should be submitted to show the State the limits of grading necessary to comply.

Should you have any questions, please contact Kiran Emler of our Kona office at 327-3530.

  
Galen M. Kuba, Division Chief  
Engineering Division

KE  
c: ENG-HILO/KONA  
Carol Christianson

LINDA LINGLE  
GOVERNOR OF HAWAII



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LAND DIVISION

2009 JAN 15 A 10:13



STATE OF HAWAII  
DEPT. OF LAND AND NATURAL RESOURCES  
NATURAL RESOURCES  
STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKILA BOULEVARD, ROOM 555  
KAPOLEI, HAWAII 96707

LAURA H. THELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

January 9, 2009

Log No. 2009.0024

Doc No. 0901TD03

MEMORANDUM

**TO:** Wesley Matsunaga, Land Agent  
Hawai'i District Land Office

**FROM:** Nancy McMahon, Deputy SHPO/State Archaeologist and Historic Preservation Manager  
*Nancy A. McMahon*

**SUBJECT:** Chapter 6E-8 Historic Preservation Review –  
Request for Easement over State Land and Environmental Assessment Exemption  
Hienaloli 1<sup>st</sup> Ahupua'a, North Kona, Island of Hawai'i  
TMK: (3) 7-5-11: 06 (por)

This is a follow-up of our letter dated March 17, 2008 regarding Ms. Carol Christianson's request for a 0.15-acre easement in order to access her property (TMK 7-5-11: 07) that is surrounded by State land. Ms. Christianson has also requested an Environmental Assessment (EA) exemption for this action.

During our review of this proposed action, a site visit was conducted and remains of historic properties were identified within the easement corridor. We recommended that prior to any ground disturbance, an archaeological inventory survey be conducted of the corridor to determine age, function and significance of the remains. We also indicated that the proposed corridor was the best alternative route for an access road, due to topographic constraints and the presence of an historic era cemetery in Parcel 6.

We have recently completed review and approval of an inventory survey of Ms. Christianson's property and the proposed easement (Log No. 2008.5611, Doc No. 0901TD01). The survey found that the easement corridor follows a former driveway/access road to Parcel 7, and that remnants of an earlier horse trail also partially overlap with the corridor. These prior routes have been impacted by the widening of Mamalahoa Highway and by erosion along the steep slope. Sufficient information was collected during the survey to mitigate any impacts that a new driveway might have on the historic trail remnant.

We have no objections to the issuance of an easement at this time, with the understanding that it will follow the corridor as surveyed and depicted in the inventory survey report (*Archaeological Inventory Survey TMK (3) 7-5-11: 07 and por. 006, Land of Hienaloli 1, North Kona District, Island of Hawaii*, A.E. Haun and D. Henry, October 2008). We will be contacting Ms. Christianson to conduct a final inspection of the easement route after it has been granted and staked, to verify its location and condition, and to view additional historic properties that were identified on her parcel.

If you have any questions, please contact Theresa K. Donham at (808) 933-7653.

cc: Ms. Carol Christianson 75-5454 Mamalahoa Highway, Holualoa, HI 96725

2009 JAN 16 A 11:13  
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LAND DIVISION

EXHIBIT D

LINDA LINGLE  
Governor of Hawaii



KATHERINE PUANA KEALOHA  
Interim Director

Telephone (808) 586-4185  
Facsimile (808) 586-4186  
Electronic Mail: [oeqc@doh.hawaii.gov](mailto:oeqc@doh.hawaii.gov)

STATE OF HAWAII  
OFFICE OF ENVIRONMENTAL QUALITY CONTROL

Department of Health  
235 South Beretania Street  
Lelopapa A Kamehameha, Suite 702  
Honolulu, Hawaii 96813

2008 FEB 26 4:10:23

February 21, 2008

Mr. Wesley T. Matsunaga  
Land Division, Department of Land and Natural Resources  
State of Hawai'i  
75 Aupuni Street, Room 204  
Hilo, Hawai'i 96720

Re: Request for Perpetual, Non-Exclusive Easement over State Lands at Hienaloli 1st,  
District of North Kona, Tax Map Key 3rd, 7-5-11, portion of 6

Dear Mr. Matsunaga:

Thank you for your letter of January 9, 2008, requesting our advice on the propriety of the Department of Land and Natural Resources declaring Ms. Carol Christianson's request for perpetual, non-exclusive easement over State lands at Hienaloli 1st, District of North Kona, Tax Map Key 3rd, 7-5-11, portion of 6, for establishing legal accesses and utility purposes. It is our understanding that surveyors found an existing road/donkey path on State land leading directly into Ms. Christianson's Kuleana.

Section 11-200-8(a), Hawai'i Administrative Rules, sets forth the process by which the, Department of Land and Natural Resources can declare an action exempt, from the preparation of an environmental assessment.

The above-cited rule requires that the Department of Land and Natural Resources, obtain the advice of outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption before it can issue an exemption declaration.

In this particular instance, due to the potential cultural and historical implications of this type of project, as well as the local cumulative impact issues, it is our opinion that the County of Hawai'i Department of Planning, and the State Historic Preservation Division of the Department of Land and Natural Resources must be consulted before the project can be approved. Once these two agencies concur with your proposed exemption determination, we would be inclined to verify the sufficiency of your proposed exemption declaration.

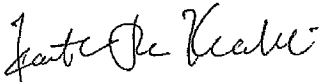
**EXHIBIT E**

Mr. Wesley T. Matsunaga  
Page 2 of 2  
February 21, 2008

We acknowledge the lengthy determination period regarding this matter, as the initial date of this proposed request was indicated as November 30, 2007. Nonetheless, the importance of determining whether this project will impact our cultural and/or environmental resources, far exceeds the timeliness issue addressed in this case. Let me assure all parties involved that I will provide guidance and assistance in any way possible to assure Ms. Christianson and the community a complete and expeditious process, in accordance with Section 343 of the Hawai'i Revised Statutes.

Should you have any further questions or concerns, please feel free to contact me at your convenience, our office number in Honolulu is (808) 586-4185.

Aloha,



Katherine Puana Kealoha, Esq.  
Interim Director

**EXHIBIT E**